

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI,
INC., OPENAI LP, OPENAI GP, LLC,
OPENAI, LLC, OPENAI OPCO LLC,
OPENAI GLOBAL LLC, OAI
CORPORATION, LLC, and OPENAI
HOLDINGS, LLC,

Defendants.

Civil Action No. 1:23-cv-11195 (SHS) (OTW)

DAILY NEWS, LP, et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION, et al.,

Defendants.

Civil Action No. 1:24-cv-3285 (SHS) (OTW)

[PROPOSED] MODEL INSPECTION PROTOCOL

Upon the stipulation of the parties, the following protocol will apply to the inspection, review, and/or disclosure of Models produced by OpenAI¹:

1. For the purposes of this protocol, “Models” shall be defined as the GPT-3.5 Turbo, GPT-4, GPT-4 Turbo, and GPT 4o models available at <https://platform.openai.com/docs/models> as well as certain deprecated models (text-davinci-001 and text-davinci-003). If the Inspecting Party requests that additional deprecated models

¹ OpenAI refers to, collectively, Defendants OpenAI, Inc., OpenAI, L.P., OpenAI L.L.C., OpenAI OpCo, L.L.C., OpenAI Global L.L.C., OAI Corporation L.L.C., OpenAI Holdings L.L.C., OpenAI GP, L.L.C., OpenAI Startup Fund GP I, L.L.C., OpenAI Startup Fund I, L.P., and OpenAI Startup Fund Management, LLC.

be made available for inspection, the Parties agree to meet and confer in good faith to discuss the feasibility and burden in making such models available.

2. The “Inspecting Party” shall be defined as each Plaintiff group in the above captioned actions, including its attorneys of record, agents, retained consultants, experts, and any other persons or organization over which it has control.

3. Nothing in this Model Inspection Protocol shall alter or change in any way the requirements of any operative Protective Order or Training Data Inspection Protocol or Order. In the event of any conflict, however, this Model Inspection Protocol shall control for any use of the Models made available for inspection.

4. Models shall be produced for inspection and review subject to the following provisions:

a. OpenAI will make the Models available through an API and provide three (3) accounts (“Accounts”) and access credentials for those Accounts to each Inspecting Party. OpenAI will provide each Inspecting Party with API credits in each Account to use for its inspection such that the Account will qualify for the Tier 5 usage tier. See <https://platform.openai.com/docs/guides/rate-limits/usage-tiers>. If the Inspecting Party exhausts the initial API credits it was provided and requests additional API credits to complete its inspection, the Parties agree to meet and confer in good faith to discuss how to address any purported need for additional API credits. Each party reserves all rights, including the right to seek relief with the Court, if agreement cannot be reached. OpenAI will reasonably cooperate with the Inspecting Party to address any technical concerns the Inspecting Party may have regarding the Accounts and Models provided.

b. The Inspecting Party is responsible for all activities that occur under its use of the Models and Accounts. The Inspecting Party may not make Account access credentials available to third parties or resell or lease access to the Inspecting Party’s Accounts. The Inspecting Party will promptly notify OpenAI if it becomes aware of any unauthorized access to or use of the Inspecting Party’s Accounts or OpenAI’s Models. Notwithstanding anything contained herein to the contrary, OpenAI acknowledges and agrees that the

Inspecting Party may access and inspect the Models in order to ascertain whether and to what extent the Models use, rely, embody, or reproduce the Inspecting Party's content and other intellectual property.

c. OpenAI owns all right, title, and interest in and to the Models. The Inspecting Party only receives rights to use the Models as explicitly granted in this Model Inspection Protocol.

d. The Inspecting Party will not:

- i. use the Models in a manner that violates any applicable laws or this Model Inspection Protocol;
- ii. use the Models in a manner that infringes, misappropriates, or otherwise violates any third party's rights;
- iii. send OpenAI any personal information of children under 13 or the applicable age of digital consent or allow minors to use OpenAI's Models without consent from their parent or guardian;
- iv. reverse assemble, reverse compile, decompile, translate, engage in model extraction or stealing attacks, or otherwise attempt to discover the source code or underlying components of the Models, algorithms, and systems of the Models (except to the extent these restrictions are contrary to applicable law);
- v. use output from the services based on the input ("Output") to develop any artificial intelligence models that compete with OpenAI products and services; or
- vi. buy, sell, or transfer API keys from, to or with a third party.

e. The Inspecting Party is responsible for all input provided to the Models ("Input") and represents and warrants that it has all rights, licenses, and permissions required to provide Input to the Models. The Inspecting Party is solely responsible for all use of the Outputs and evaluating the Output for accuracy and appropriateness for its use case, including by utilizing human review as appropriate.

f. If the Inspecting Party uses the Models to process personal data, the Inspecting Party must (a) provide legally adequate privacy notices and obtain necessary consents for the processing of personal data by the Models, (b) process personal data in accordance with applicable law, and (c) if processing “personal data” or “Personal Information” as defined under applicable data protection laws, execute OpenAI’s Data Processing Addendum (available at <https://openai.com/policies/data-processing-addendum/>) by filling out the form located at <https://ironcladapp.com/public-launch/63ffefa2bed6885f4536d0fe>.

g. The Inspecting Party agrees not to use the Models to create, receive, maintain, transmit, or otherwise process any information that includes or constitutes “Protected Health Information”, as defined under the HIPAA Privacy Rule (45 C.F.R. Section 160.103), unless the Inspecting Party has signed a Healthcare Addendum and Business Associate Agreement (together, the “Healthcare Addendum”) with OpenAI prior to creating, receiving, maintaining, transmitting, or otherwise processing this information.

h. The Inspecting Party agrees that it is responsible for any liabilities, damages, and costs (including reasonable attorneys’ fees) payable to a third party arising out of a third party claim related to the Inspecting Party’s use of the Models in violation of this Model Inspection Protocol.

i. The Inspecting Party agrees to comply with all applicable trade laws, including sanctions and export control laws. OpenAI’s Models may not be used in or for the benefit of, or exported or re-exported to (a) any U.S. embargoed country or territory or (b) any individual or entity with whom dealings are prohibited or restricted under applicable trade laws. OpenAI’s Models may not be used for any end use prohibited by applicable trade laws, and the Inspecting Party’s Input may not include material or information that requires a government license for release or export.

5. The Inspecting Party does not waive any applicable work-product protection over its use of the Models. OpenAI, including its attorneys of record, agents, retained consultants, experts, and any other persons or organization over which it has control, will not

access any logs or monitor any other activity associated with the Accounts, and any such logs or activity will be subject to work-product production.

6. The Inspecting Parties' searches and outputs shall be subject to a zero-day retention policy on OpenAI's systems.

7. Notwithstanding any provisions of this Model Inspection Protocol or the Protective Order entered on May 31, 2024, the Parties reserve the right to amend this protocol either by written agreement or Order of the Court upon showing of good cause.

IT IS SO STIPULATED, through Counsel of Record.

Dated: October 21, 2024

MORRISON & FOERSTER LLP

By: /s/ Joseph C. Gratz

Joseph C. Gratz (*pro hac vice*)

JGratz@mofo.com

Vera Ranieri (*pro hac vice*)

VRanieri@mofo.com

425 Market Street

San Francisco, CA 94105-2482

Telephone: 415.268.7000

Facsimile: 415.268.7522

Rose S. Lee (*pro hac vice*)

RoseLee@mofo.com

707 Wilshire Boulevard

Los Angeles, California 90017-3543

Telephone: (213) 892-5200

Facsimile: (213) 892-5454

Attorneys for Defendants

OPENAI, INC., OPENAI LP, OPENAI

GP, LLC, OPENAI, LLC, OPENAI

OPCO LLC, OPENAI GLOBAL LLC,

OAI CORPORATION, LLC, and

OPENAI HOLDINGS, LLC

Dated: October 21, 2024

LATHAM & WATKINS LLP

By: /s/ Elana Nightingale Dawson

Andrew Gass (*pro hac vice*)
andrew.gass@lw.com
Joseph R. Wetzel (*pro hac vice*)
joe.wetzel@lw.com
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 391-0600
Facsimile: (415) 395-8095

Sarang Damle
sy.damle@lw.com
Elana Nightingale Dawson
elana.nightingaledawson@lw.com
555 Eleventh Street NW
Suite 100
Washington, DC 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

Allison Levine Stillman
alli.stillman@lw.com
1271 Avenue of the Americas
New York, NY 10020
Telephone: (212) 906-1200
Facsimile: (212) 751-4864

Attorneys for Defendants
OPENAI, INC., OPENAI LP, OPENAI
GP, LLC, OPENAI, LLC, OPENAI
OPCO LLC, OPENAI GLOBAL LLC,
OAI CORPORATION, LLC, and
OPENAI HOLDINGS, LLC

Dated: October 21, 2024

KEKER, VAN NEST & PETERS LLP

By: /s/ Paven Malhotra

Robert A. Van Nest (*pro hac vice*)
RVanNest@keker.com
R. James Slaughter (*pro hac vice*)
RSlaughter@keker.com
Paven Malhotra
PMalhotra@keker.com
Michelle S. Ybarra (*pro hac vice*)
MYbarra@keker.com
Nicholas S. Goldberg (*pro hac vice*)
NGoldberg@keker.com
Thomas E. Gorman (*pro hac vice*)
TGorman@keker.com
Katie Lynn Joyce (*pro hac vice*)
KJoyce@keker.com
633 Battery Street
San Francisco, California 94111-1809
Telephone: (415) 391-5400
Facsimile: (415) 397-7188

Attorneys for Defendants
OPENAI, INC., OPENAI LP, OPENAI
GP, LLC, OPENAI, LLC, OPENAI
OPCO LLC, OPENAI GLOBAL LLC,
OAI CORPORATION, LLC, and
OPENAI HOLDINGS, LLC

Dated: October 21, 2024

By: /s/ Ian Crosby

Ian Crosby (pro hac vice)
Susman Godfrey L.L.P.
401 Union Street, Suite 3000
Seattle, WA 98101
Telephone: (206) 516-3880
icrosby@susmangodfrey.com

Davida Brook (pro hac vice)
SUSMAN GODFREY L.L.P.
1900 Ave of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
dbrook@susmangodfrey.com

Steven Lieberman (SL8687)
ROTHWELL, FIGG, ERNST
& MANBECK, P.C.
901 New York Avenue, N.W., Suite 900
East
Washington, DC 20001
Telephone: (202) 783-6040
slieberman@rothwellfigg.com

***Attorneys for Plaintiff The New York
Times Company***

Dated: October 21, 2024

By: /s/ Jennifer B. Maisel

Steven Lieberman (SL8687)
Jennifer B. Maisel (5096995)
Robert Parker (admitted pro hac vice)
Jenny L. Colgate (admitted pro hac vice)
Mark Rawls (admitted pro hac vice)
Kristen J. Logan (admitted pro hac vice)
Bryan B. Thompson (6004147)
ROTHWELL, FIGG, ERNST &
MANBECK, P.C.
901 New York Avenue, N.W., Suite 900
East
Washington, DC 20001
Telephone: (202) 783-6040
Facsimile: (202) 783-6031
slieberman@rothwellfigg.com
jmaisel@rothwellfigg.com
rparker@rothwellfigg.com
jcolgate@rothwellfigg.com
mrawls@rothwellfigg.com
klogan@rothwellfigg.com
bthompson@rothwellfigg.com

Jeffrey A. Lindenbaum (JL1971)
ROTHWELL, FIGG, ERNST &
MANBECK, P.C.
3 Manhattanville Road, Suite 105
Purchase, New York 10577
Telephone: (202) 783-6040
Facsimile: (202) 783-6031
jlindenbaum@rothwellfigg.com

***Attorneys for Plaintiffs Daily News, LP;
The Chicago Tribune Company, LLC;
Orlando Sentinel Communications
Company, LLC; Sun-Sentinel Company,
LLC; San Jose Mercury-News, LLC; DP
Media Network, LLC; ORB Publishing,
LLC; and Northwest Publications, LLC.***

IT IS ORDERED that the forgoing Agreement is approved.

Dated:

HON. ONA T. WANG

United States Magistrate Judge